

**Draft Guidelines
for
Implementation of Executive Order 13141
July 11, 2000**

SUBMISSION OF WRITTEN COMMENTS: Persons wishing to submit written comments on the draft Guidelines in response to this notice should provide 20 copies no later than Friday, August 25, 2000. Comments should be addressed to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, room 122, 600 Seventeenth Street, NW, Washington, DC 20508. Comments should be marked ATTN: Draft Guidelines for Implementation of Executive Order 13141 – Environmental Review of Trade Agreements.

I. Purpose of the Guidelines

1. The purpose of these Guidelines is to implement Executive Order 13141, Environmental Review of Trade Agreements. They are meant to ensure that consideration of reasonably foreseeable environmental impacts of trade agreements (both positive and negative), and identification of complementarities between trade and environment objectives, are consistent and integral parts of the trade and environmental policymaking process.

II. Environmental Review of Trade Agreements

1. Section 4(a) of the Executive Order identifies three categories of agreements for which an Environmental Review (ER) is mandated: (1) comprehensive multilateral trade rounds; (2) bilateral or plurilateral free trade agreements; and (3) major new trade liberalization agreements in natural resource sectors.
2. Section 4(c) of the Executive Order provides that ERs may also be done for other agreements. The decision whether to conduct an ER in such cases shall be based on an objective assessment of the particular agreement.
3. The significance of reasonably foreseeable environmental impacts shall be an essential factor in determining whether to conduct an ER for Section 4(c) agreements. The assessment of this factor shall include consideration of the following:
 - a. The extent to which the agreement might affect environmentally sensitive resources and/or result in substantial changes in trade flows of products or services that could confer environmental harms or benefits;
 - b. The extent to which the agreement might affect U.S. environmental laws, regulations, policies, and/or international commitments; and

- c. The magnitude and scope of reasonably foreseeable environmental impacts.
- 4. In certain circumstances, it may be appropriate also to consider operational constraints when determining whether to conduct an ER for Section 4(c) agreements. Such constraints may relate to the negotiation timetable, the lack of available relevant data and analytical tools, and the relative priority among competing needs for environmental expertise in trade-related activities.
- 5. The Executive Order anticipates that most sectoral liberalization agreements will not require an ER because it is anticipated that they are unlikely to result in significant environmental impacts.
- 6. A decision not to conduct an ER for a Section 4(c) agreement will not relieve the Federal government of the obligation to consider environmental issues under the process of ongoing assessment and review applicable to all trade agreements, see Section VIII. The decision not to conduct an ER may be reassessed as appropriate.

III. Initiation of the Written Environmental Review Process

A. General Principles

- 1. The overarching goal of the ER process is to ensure that, through the consistent application of principles and procedures, environmental considerations are integrated into the development of U.S. positions in trade negotiations. In order to accomplish this goal, the ER process should be initiated early enough to maximize the usefulness of environmental information and analysis for informing negotiating positions.
- 2. Pursuant to Section 5 of the Executive Order, the ER process shall not be a condition for the timely tabling of specific negotiating position.

B. Process Considerations

- 1. USTR, through the Trade Policy Staff Committee (TPSC) interagency process, shall initiate the ER process with a notice in the Federal Register as soon as possible once sufficient information exists concerning the scope of the proposed trade agreement. See Appendix A.
- 2. Environmental issues shall be analyzed by the relevant TPSC subcommittee(s) conducting the negotiation or, as appropriate, by a working group under the subcommittee established for such purpose. For

purposes of these Guidelines, the term Environmental Review Group (ERG) refers to any TPSC group tasked with the environmental review of trade agreements under these Guidelines.

3. In order to expedite the initiation of the ER process for a particular trade agreement, it may be desirable to analyze discrete aspects of the proposed agreement as sufficient information becomes available. In all cases, the final ER document should address identified environmental impacts in a comprehensive manner.
4. For some agreements that fall under Section 4(c) of the Executive Order, the need for an ER may not be identified until after specific negotiating positions have been established or are under development. In such cases, the ER process shall be initiated as soon as feasible thereafter.

IV. Determining the Scope of the Environmental Review

A. General Principles

1. In order to target governmental resources effectively, the scope of the ER must be considered in advance of the analysis of potential environmental impacts. The early involvement of interested agencies and the public in the scoping process helps assure that the analysis is adequate and that issues are identified early in the process.
2. The scoping process involves the identification of significant issues to be analyzed in depth in the ER, along with the elimination from detailed study of those issues which are not significant or have been covered by prior reviews.
3. Scoping includes consideration of the environmental dimensions of the regulatory and trade policies at issue, including ways in which the trade agreement can complement U.S. environmental objectives.
4. USTR, through the TPSC, shall request public comment on the scope of the ER through the Federal Register Notice of Initiation, and shall seek the views of advisory committees, including the Trade and Environment Policy Advisory Committee (TEPAC). See Section VI and Appendix A.

B. The Scoping Process

1. Overview
 - a. The scoping process for the ER has two principal components: (i) identification of issues; and (ii) prioritization of issues. The first component focuses on soliciting input and determining the types of

environmental impacts that could result from the proposed trade agreement. The second component focuses on prioritizing the significant issues that should be analyzed to determine environmental consequences of the trade agreement. The result of an effective scoping process is a targeted, analytical work plan.

- b. Issue identification and prioritization is an iterative process. Negotiating positions are likely to undergo continual adjustment until the agreement is completed. The steps taken to establish the scope of the ER may, therefore, be revisited throughout the process.

2. Identification of Issues

- a. This step in the scoping process is meant to identify the range of possible environmental concerns. However, not all issues identified will necessarily be analyzed in the ER. The second step in the scoping process, issue prioritization (described below), will be used to select important issues warranting analysis.
- b. Solicitation of Information
 - (1) The scoping process shall draw upon the knowledge of any agency with relevant expertise in the subject matter under consideration, as well as the views of the public and advisory committees.
- c. Information Relevant to Scoping
 - (1) Three types of information shall be considered when determining the scope of the ER:
 - (a) The scope and objectives of the proposed trade agreement;
 - (b) A realistic range of alternative approaches for accomplishing the broad objectives of the trade agreement; and
 - (c) Types of reasonably foreseeable environmental impacts.
- d. Scope of the Proposed Trade Agreement
 - (1) The scope of the ER is a function of the scope of the proposed trade agreement. Thus, the ERG shall maintain

continuing awareness of the negotiation goals as they evolve. Relevant TPSC working groups should confer with the ERG to ensure that the scope of the ER properly reflects emerging environmental issues.

e. Alternative Negotiating Approaches

(1) Where a range of alternative negotiating approaches is under consideration for accomplishing the broad objectives of the trade agreement, the scoping process should be used to gain an understanding of important elements likely to be at issue in the negotiations.

(2) Negotiating approaches identified for analysis shall be compared with a base or baseline scenario. Alternative approaches may also include consideration of methods for addressing positive and negative environmental impacts. See Section V.

f. Types of Reasonably Foreseeable Environmental Impacts

(1) During the initial stages of scoping, a range of reasonably foreseeable environmental impacts (both positive and negative) should be considered for inclusion in the ER. See Appendix B. Later, as scoping progresses, some of the identified impacts may be eliminated from consideration through the process of prioritization described below.

(2) Domestic impacts are necessarily the primary concern and priority of the Executive Order and these Guidelines. However, the scoping process shall also consider pursuant to Section IV.B.4, whether it is appropriate and prudent to examine global and transboundary impacts.

(3) The ERG may consult, consistent with existing legal requirements, with academic, federal, state or local entities, and/or other interested groups that have relevant experience with economic and environmental analyses and modeling techniques.

3. Prioritization of Issues and Considerations for Establishing Scope

a. Once the environmental issues have been sufficiently identified, the ERG shall prioritize the issues and establish the scope of the ER.

- b. Considerations for establishing ER scope include:
 - (1) The relative importance placed on a particular issue by governmental agencies, the informed public, and/or advisory committees;
 - (2) Availability of analytical tools capable of assessing environmental impacts at an adequate level of detail; and
 - (3) Existence of opportunities for building on or incorporating by reference work already performed or being performed elsewhere in the interagency process.

4. Special Considerations for the Scoping of Global and Transboundary Impacts

- (1) The scoping process for every ER shall examine whether it is appropriate and prudent to examine such global and transboundary impacts.
- (2) Evaluation of whether it is appropriate and prudent to examine global and transboundary impacts shall include consideration of the following:
 - (a) scope and magnitude of reasonably foreseeable global and transboundary impacts;
 - (b) implications for U.S. international commitments and programs for international cooperation;
 - (c) availability of necessary data and analytic tools for addressing impacts outside the U.S.;
 - (d) diplomatic considerations;
 - (e) availability of government resources.

V. Analytical Content

A. General Principles:

- 1. Since trade agreements exhibit broad variation, and because the science of environmental impact modeling is rapidly evolving, it is likely that each ER will incorporate uniquely tailored analytical approaches. A different mix of analytical

methodologies will be needed for different types of trade agreements.

2. Analysis shall be both qualitative and quantitative and environmental impacts should be analyzed on the basis of scientific information and principles, documented experience and objective data. The analytical process should take into consideration assumptions and/or uncertainty in the data and methodologies and document any limitations due to those assumptions or uncertainties.

B. Analysis of Regulatory Environmental Impacts

1. The ER shall examine the extent to which the trade agreement has impacts on U.S. environmental laws and obligations. Examples of such impacts include the ability to maintain, strengthen and enforce laws, regulations and policies on pollution control; control of toxic and hazardous wastes and materials; protection of natural resources, wildlife and endangered species; product standards relevant to human health, safety, and the environment; control and regulation of pesticides; food safety; and the public's ability to obtain information regarding the environment.

C. Analysis of Economically Driven Environmental Impacts

1. The ER shall examine the extent to which environmental impacts may flow from economic changes estimated to result from the trade agreement. Application of modeling techniques may provide a useful approach for estimating such environmental impacts. However, modeling and other economic analytical techniques, in and of themselves, are unlikely to provide an exclusive means for assessing areas of environmental concern. For example, prevailing tools for assessing the economic effect of comprehensive trade agreements rely on aggregation of resource sectors to estimate broad trends, while estimates of environmental impact generally benefit from a more local or regional analysis.
2. Environmental impacts will be analyzed in comparison to a base or baseline scenario. Such a comparison shall take into account that changes are likely to occur in the economy and the environment even in the absence of the proposed trade agreement.

D. Identifying Ways to Address Environmental Impacts

1. Where significant environmental impacts have been identified, there shall be an analysis of options to mitigate negative impacts and create or enhance positive impacts. Options may include both changes to negotiating positions and also measures outside the trade agreement, including possible

changes or additions to relevant U.S. environmental laws, regulations, policies, and other existing measures. To the extent possible, costs and benefits associated with various forms of mitigation or enhancement should also be assessed.

2. Where options that address identified impacts are described in the ER document, they may include options for post-agreement actions for agencies to consider, such as actions to assess the accuracy of the analysis.

VI. Public Participation

1. Provision for public participation in the review and assessment of environmental impacts of trade agreements is an essential component of these Guidelines, and is meant to ensure that the public and the government benefit from an open and inclusive process of trade policy development. In addition to public participation, the ERG shall also consult with advisory committees.
2. Procedures for public participation should be flexible, not excessively burdensome, and responsive to needs for expedited action and confidentiality. The period for public comment will normally be forty-five days, unless a shorter or longer period is appropriate.
3. Public notification shall be far enough in advance of critical junctures that, to the extent practicable, the public has a reasonable opportunity to prepare and submit comments to be taken into account during the ER process. Appendix A provides guidance on the types and content of public notification.
4. Public hearings, notices in relevant publications, web site postings, and other mechanisms shall be employed as appropriate and feasible. When the negotiating timetable permits, a public hearing or hearings shall normally be scheduled.

VII. Documentation of the Environmental Review Process

A. General Principles

1. The primary purpose for documenting the ER is to memorialize the process and explain the rationale for the conclusions reached. Documentation also provides numerous opportunities for integrating environmental considerations into negotiating positions. To that end, the Draft ER, along with public comments, shall serve as a means of informing the negotiation process.

2. In addition to informing the public, the Final ER should serve as a record for subsequent ERs so that lessons can be learned and information drawn from the effort.
3. In order to factor environmental considerations into the development of trade negotiations, relevant work products resulting from the ER process should be completed far enough in advance to be of benefit to the U.S. trade negotiators. However, pursuant Section 5 of the Executive Order, completion of ER documentation shall not be a condition for the timely tabling of specific negotiating positions.
4. The need for confidentiality shall be taken into account when developing ER documentation.

B. The Environmental Review Documents

1. Consistency in the ER process, to the extent allowed by variations in trade agreements, should be reflected through a consistent documentation format and content. Appendix C provides information on the structure and content that shall normally be followed for draft and final ER documents.
2. All ER documentation shall be written in plain language and shall provide the rationale for the scope of the analysis and the selected methodology. The ER documents shall also include a summary of key points raised in public comments.
3. A Draft ER document for public comment shall normally be prepared. However, in unusual circumstances, such as when a trade agreement is to be completed under a compressed negotiating schedule, a Draft document may not be possible. In such cases, the Final ER document shall be issued publically as soon as is feasible following the conclusion of the trade agreement.
4. As deemed appropriate by USTR through the TPSC process, amended ER document(s) (draft and/or final) may be completed and made available to the public when negotiations lead to a trade agreement with environmental implications that are substantially different from those analyzed.

VIII. The Process of Ongoing Environmental Assessment and Evaluation

1. It is the continuing responsibility of the Federal government to factor environmental considerations into the development of its trade negotiating objectives and positions. This is accomplished for all trade agreements

through a process of ongoing assessment and evaluation, including those cases where an ER is not conducted.

2. USTR shall facilitate the process of ongoing assessment and evaluation of trade agreements through early consultations with interested agencies, advisory committees and the public. In notices USTR issues requesting comment on broad issues early in the development of a trade agreement, USTR shall also normally request comment on environmental issues.
3. Agencies should bring important environmental issues to the attention of the relevant TPSC subcommittee(s). If post-agreement actions are warranted or desirable, they may be undertaken by the responsible agency.
4. Agencies shall use best efforts to identify sources of data and analytical methodologies available within and outside of the U.S. government, which would then provide a foundation for subsequent specific environmental analyses. A list of such sources shall be created and made available to the public. The list may be updated over time, including on the basis of comments from the public.

IX. Administrative Considerations

A. Roles and Responsibilities

1. Regardless of whether a written ER is mandated, USTR shall initiate the TPSC process for examining environmental issues as early as feasible in the consideration of potential trade agreements. For those agreements falling within the 4(c) category, USTR, through the TPSC, shall also determine whether an agreement warrants an ER. The decision whether to proceed with an ER shall be reflected in the TPSC paper(s) initiating negotiations. These paper(s) shall include, as appropriate, discussion of the environmental issues identified at this early stage in the TPSC process, and recommendations on how they should be addressed.
2. USTR, through the TPSC, shall conduct the ER. Environmental issues shall be analyzed by the relevant TPSC subcommittee(s) conducting the negotiation and/or, as appropriate, an ERG established for such purpose. Membership in the ERG shall be open to all interested agencies, and shall include, at a minimum, those agencies with relevant expertise in economic and environmental assessment.
3. In order for the Executive Order to be effectively implemented, it is essential that adequate resources be available. Upon request from USTR, with the concurrence of the Deputy Director for Management of the Office of Management and Budget, Federal agencies shall, to the extent permitted by law and subject to the availability of appropriations, provide analytical

and financial resources and support, including the detail of appropriate personnel to USTR to carry out these Guidelines.

4. While environmental analyses of an agreement shall draw upon multiple agency perspectives, CEQ and agencies with environmental expertise shall play a prominent role in the conduct of environmental reviews. Environmental agencies shall bear principal responsibility for providing the expertise necessary to analyze impacts on environmental media and natural resources within their areas of specialization.

B. Implementation and Oversight

1. CEQ and USTR shall jointly exercise general oversight of the implementation of these Guidelines including their periodic review and update as necessary.
2. These Guidelines are intended only to improve the internal management of the executive branch and do not create any right, benefit, trust or responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or any person.

Appendix A:

Public Participation Considerations

This appendix provides details on the format for particular elements of public participation described in the Guidelines. The time between key steps in the trade negotiation process will vary depending on the type and scope of the proposed agreement as well as the dynamics of the negotiation. For that reason, the precise number and timing of Federal Register notices and other mechanisms for public participation cannot be prescribed with specificity. Federal Register notices shall also normally be posted on USTR's internet web site.

I. Minimum Requirements for Public Participation in Environmental Review Process

- A. At a minimum, the public shall be involved at the following stages of the Environmental Review process:
 1. Notice of Intent to Conduct Environmental Review (may be combined with other notices USTR issues early in the development of a trade agreement)
 2. Notification of Intent to Initiate Environmental Review and Request for Comments on the Scope of Environmental Review
 3. Notification of Availability of the Draft Environmental Review document and Request for Comments (in the normal case where a draft document is prepared)

4. Notification of Availability of the Final Environmental Review document
- B. USTR shall also normally seek public views on environmental issues through periodic meetings with advisory committees and the interested public.

II. Guidance for Particular Public Notifications

- A. Notice of Intent to Conduct Environmental Review
 1. USTR shall notify the public of a decision to conduct an Environmental Review of the agreement. This notice may be combined with USTR notices requesting comment on broad issues early in the development of a trade agreement, which normally will request comment on environmental issues.
- B. Notice of Intent to Initiate Environmental Review and Request for Comments on Scope
 1. The notice and request shall normally provide information on the following subjects:
 - a. key US negotiating objectives,
 - b. the elements and topics expected to be under consideration for coverage by the proposed agreement,
 - c. the countries expected to participate in the agreement,
 - d. the sectors of the US economy likely to be affected (if known),
 - e. environmental issues already identified through the interagency process as potentially significant.
 2. The notice may also explain how the public can obtain more information about the scoping process.
 3. It may be possible to combine this notice with Federal Register notices issued for other purposes (e.g., when USTR issues requests comment on broad issues associated with the trade agreement early in its development).
 4. It may also be appropriate to request comments on the scope of the environmental review on multiple occasions as new information emerges and/or negotiating objectives shift.
- C. Notice of Availability of Draft Environmental Review Document and Request for Comments
 1. In the normal circumstance, where a Draft Environmental Review document is prepared, the Draft ER shall be made available to the public through publication of a notice of availability in the Federal Register, and comments from the public will be requested.
- D. Notice of Availability of Final Environmental Review Document
 1. The Final Environmental Review document shall be made available to the public through publication of a notice of availability in the Federal Register.
- E. Availability of Public Comments

1. Public comments on environmental issues relating to the particular trade agreement shall be available for public review in the USTR reading room.
- F. Revision of Guidelines
1. USTR and CEQ through the TPSC may on occasion find it appropriate to revise and/or update these Guidelines. Public participation in the revision process shall include notification of the intent to revise and an opportunity for public comment on any significant revisions.

Appendix B:

Types of Potential Environmental Impacts for Consideration

This list provides a list of the types of impacts which may be useful for identifying the range of reasonably foreseeable environmental impacts for a proposed trade agreement. This list is illustrative and is intended to provide a general frame of reference for assisting in establishing the scope of the ER. The scope of any review must be determined on a case-by-case basis and all reasonably foreseeable environmental effects, both positive and negative, should be considered during scoping for the environmental review whether or not they are included on this list.

Scoping with respect to economic effects typically will result from an iterative exchange between those responsible for economic analysis and those with expertise in various areas of environmental concern. Similarly, with respect to the potential effects on environmental regulations of proposed trade disciplines, the scoping will typically involve an iterative exchange between those expert in the development and interpretation of trade texts and those expert in the development and interpretation of various fields of environmental regulation.

- I. Regulatory Effects
 - A. Potential impacts of the proposed trade agreement on U.S. environmental regulations, statutes, other binding obligations such as multilateral environmental agreements.
 - B. Potential impacts of the proposed trade agreement on environmental policy instruments and other commitments.
- II. Economic Effects (compared to a base or projected baseline)
 - A. Products, processes, environmentally sensitive sectors or regions that may be affected by the proposed trade agreement.
 - B. Changes in types or characteristics of goods and services and their distribution.
 - C. Changes in volume, pattern, and modes of transportation (e.g., relating to invasive species or pollution impacts of transportation equipment and infrastructure).
 - D. Structural changes (e.g., expansion or contraction of an environmentally sensitive sector in a certain country or region).
 - E. Technology effects involving changes in the process of production, including use of environmentally responsible technology.
 - F. Effect of the size of economies involved.
- III. Environmental Effects (related to economic effects identified above)

- A. Changes in level, intensity, geographic distribution and temporal scope of variables used to measure the affected environment in comparison with base values (using either base year or baseline trend as appropriate).
 - B. Interaction of trade-related impacts with other impacts on the relevant media or resources.
 - C. Environmental effects resulting from any changes of standards that stem from economic effects.
- IV. Environmental Media and Resources
- A. Air quality and atmosphere (including climate, ozone).
 - B. Fresh water quality and resources (including both surface and ground), soil retention and quality.
 - C. Protected or environmentally sensitive terrestrial and marine areas, (e.g., national parks, national wildlife refuges, wetlands, marine sanctuaries).
 - D. Endangered species and other species identified as significant under law (e.g., marine mammals, migratory birds).
 - E. Marine, aquatic and terrestrial biodiversity, including species, genetic variety and ecosystems and the potential for invasive species to compromise such biodiversity; also ecosystem productivity and integrity, living resources and ecosystem services.
 - F. Environmental quality related to human health, including changes in environmental exposure to toxic substances (e.g., increases or decreases in exposure to pesticide residues on food).
 - G. Transboundary and global impacts may include those on:
 - 1. Places not subject to national jurisdiction or places subject to shared jurisdiction, such as Antarctica, atmosphere (including ozone and climate change features), outer space, and the high seas;
 - 2. Migratory species, including straddling and highly migratory fish stocks and whale;
 - 3. Impacts relating to other environmental problems identified by the international community as having a global dimension and warranting a global response;
 - 4. Transboundary impacts involving the boundaries of the United States.

Appendix C:

Structure and Content of Environmental Review Documents

This appendix provides details on the structure and content of the draft and final environmental review documents. In certain circumstances (e.g. confidentiality, compressed schedule) it may be necessary to adopt a modified documentation format, however, each ER document shall normally consist of the following sections:

- (1) Summary
- (2) Table of Contents
- (3) Objectives of the Proposed Trade Agreement

- (4) Scope of Environmental Impacts Reviewed
- (5) Environmental Impacts & Response Options
- (6) Findings and Conclusions
- (7) List of Preparers
- (8) Appendices

I. Guidance for Particular ER Document Sections

- A. The **Objectives** section of the ER document should present an overview of the goals and negotiating history of the particular trade agreement under consideration. This section may highlight the perceived benefits of the agreement and related objectives for pursuing it.
- B. The **Scope of Impacts** section should describe only those resources and/or regulations that were selected for review through the scoping process. This section should not be a compendium of all potentially impacted areas, but only those considered by the ERG to be sufficiently important to warrant analysis in the ER. This section of the ER document should also provide a brief presentation of the rationale employed during the issue prioritization process and the criteria used for establishing the scope of the ER and eliminating issues deemed irrelevant.
- C. The **Environmental Impacts** section of the document should describe the expected impacts of those negotiating positions selected for review, which should be compared to a base or baseline scenario that estimates conditions that would exist in the absence of the proposed trade agreement. The described impacts should include both beneficial and adverse impacts. This section should summarize the analytical methodology used in determining the environmental impacts, including assumptions made and uncertainties in the data and methodology (a description of the methodology may best be provided in an appendix). The Environmental Impacts section of the ER document may also include a description of actions proposed for addressing negative impacts and/or for enhancing beneficial consequences of the proposed trade agreement.
- D. The **Conclusions** section of the document should summarize the potential environmental impacts expected from the proposed trade agreement, and may present options for addressing those impacts. This section of the document may also include discussion of any post-agreement actions when responsible agencies determine that such actions are warranted or desirable.
- E. The number and nature of **Appendices** for each Environmental Review document will vary according to the nature of the trade agreement under review. In general, the use of appendices is encouraged whenever inclusion of technical and/or supporting data would improve clarity and aid in the understanding of the review process. At a minimum, a summary of key issues identified by the public during the ER process should be included as an appendix of both the draft and final ER

documents.